IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WP(C).No. 36626 of 2007(I)

PETITIONER:

BALKEESA, W/O KALAKATTUKARAN SHAMSUDEEN,
KATTUNGACHIRA, IRINJALAKUDA, THRISSUR-680121.

BY ADV. SRI.P.B.SAHASRANAMAN

RESPONDENTS:

SAKTHAN KURIES & LOANS(P)LTD,
PALLIKULAM ROAD, CHEMBUKAVE, THRISSUR,
REP. BY ITS MANAGING DIRECTOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.36626 OF 2007

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Dated this the 12th day of December 2007

JUDGMENT

This writ petition is preferred against the order of the Sub Court, Irinjalakkuda in E.A.No.949 of 2007 in E.P.No.185 of 2003 in O.S.No.428 of 2003. By the said order, the court below has fixed the upset price at Rs.4 lakhs and has not considered the objections raised by the judgment debtor. A perusal of the records would reveal that originally the upset price was fixed at Rs.4.5 lakhs and there were no bidders to purchase the property. Therefore, on the petition filed by the decree holder the upset price is fixed at Rs.4 lakhs.

2. On the other hand, the petitioner would contend that the property would fetch Rs.12 lakhs at least and it is not correct to fix the upset price at Rs.4 lakhs. Under the second proviso to Order 21 Rule 66(2) of the C.P.C. the court is not bound to fix its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both of the parties. So there is a statutory mandate that there must be a direction by the court to incorporate the value shown by both parties in the

sale proclamation. It is not clear from the order passed by the court whether such a direction is given.

3. Therefore, I direct the court below to incorporate the price suggested by the judgment debtor also in the sale proclamation, i.e. otherwise direct the decree holder to produce a fresh proclamation showing the value suggested by the judgment debtor and thereafter fix a date for sale and proceed in accordance with law. Meanwhile it is submitted that the judgment debtor is prepared to pay the amount in instalments. If the decree holder consents to it, the court is at liberty to pass such orders as well.

Therefore the writ petition is disposed of with the above direction and the sale which is posted to 3.1.2008 shall be deferred in the light of these directions.

M.N.KRISHNAN, JUDGE

Cdp/-